

Subash Gupta vs.state

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Court : Delhi

Decided On : Jan-19-2018

Appellant : Subash Gupta

Respondent : State

Advocate for Pet/Ap. : Mr. Vikas Walia, Mr. Sumit Misra, Ms. Anita Abraham, Ms. Radhika Kolluru, Ms. Gitanjali Malviya, Ms. Sana-Ul-Haq, Mr. Purushendra Bhardwaj, Mr. Ravinder Tyagi, Ms. Kanishka Tyagi, Ms. Kartika Tyagi, Ms. Divya Singhal

Judgement :

\$~ * + + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

22. d December, 2017 Pronounced on:

19. h January, 2018 CRL.A. 247/2000 SUBASH GUPTA Appellant Through: Mr.Mohit Mathur, Sr. Advocate with Mr.Vikram Panwar, Mr Vikas Walia and Mr. Sumit Misra, Advocates STATE STATE versus Respondent Through: Ms. Anita Abraham and Ms. Radhika Kolluru, APP for State. Ms Gitanjali Malviya and Ms Sana-Ul-Haq and Mr Purushendra Bhardwaj, Advocates for Respondent Nos. 6, 7 & 9 And CRL.A. 81/2003 Appellant Through: Ms. Anita Abraham and Ms. Radhika Kolluru, APP for State versus

... RESPONDENTS

SUBASH GUPTA & ORS. Through: Mr.Mohit Mathur, Sr. Advocate with Mr.Vikram Panwar, Mr Vikas Walia and Mr Sumit Misra, Advocates for R-1 Mr Ravinder Tyagi, Ms Kanishka Tyagi, Ms Kartika Tyagi and Ms Divya Singhal, Advocates Crl.A.247/2000 & Crl.A.81/2003 Page 1 of 55 for Respondent Nos.3, 4 and 5 Ms Gitanjali Malviya and Ms Sana-Ul-Haq and Mr.Purushendra Bhardwaj, Advocates for

... RESPONDENTS

Nos.6, 7& 9 CORAM: JUSTICE S. MURALIDHAR JUSTICE I.S. MEHTA JUDGMENT % Dr. S. Muralidhar, J.: Introduction 1.1 These two appeals, one by Subash Gupta (Accused No.1: A-1), and the other by the State are directed against the same impugned judgment dated 28th March 2000 passed by the learned Additional Sessions Judge (ASJ), Delhi in Sessions Case No.149/1998 arising out of FIR No.340/1996 registered at Police Station (PS) Okhla Industrial Area convicting the A-1 for the offences under Sections 302/364/301 IPC. A-1 was, however, acquitted of the offence under Section 120-B IPC and Section 216 read with Section 34 IPC. 1.2 The appeal by A-1 is also directed against the order on sentence dated 30th March 2000 whereby (i) for the offence under Section 302 IPC, A-1 was sentenced to undergo rigorous imprisonment (RI) for life and a fine of Rs.5,000; (ii) for the offence under Section 364 IPC, to undergo RI for 5 years and fine of Rs.3,000/- and in default, to undergo simple imprisonment (SI) for 3 months; and Crl.A.247/2000 & Crl.A.81/2003 Page 2 of 55 (iii) for the offence under Section 201 IPC to undergo RI for three years and pay a fine of Rs,1,000/- and in default, to undergo SI for 1 month. All sentences were directed to run concurrently. 1.3 There were eight other co-accused (A-2 to A-9, with A-10 remaining absconding during the trial) who were, by the same judgment, acquitted of all the offences they were charged with. Aggrieved by the aforementioned acquittal of A-2 to A-9, and the acquittal of A-1 for the offence under Section 120-B IPC and Section 216 read with Section 34 IPC, the State has filed Criminal Appeal No.81/2003. 1.4 A-1 to A-10 were charged with conspiring to kill and pursuant thereto murdering Dr. Sunil Kaul (hereafter 'SK'), the Director of Personal Point Ltd. (PPL), which was running a weight loss centre in Delhi, and two of its employees viz., Sujata Saha (hereafter SS) and Deepa Gupta (hereafter 'DG'). By this judgment this Court is while allowing the appeal of A-1 and dismissing the

appeal of the State, affirming the judgment of the trial Court as regards the acquittal of A-2 to A-9 for the offences as noted hereinbefore and reversing the judgment of the trial Court as regards the conviction of A- 1 and thereby acquitting him of the offences under Sections 302, 364 and 201 IPC. Background facts 2. The case of the prosecution is contained in the charge sheet and supplementary charge sheet filed in the trial Court on 6th September 1996 and 29th November 1996 respectively. In terms thereof, A-1 was executing Crl.A.247/2000 & Crl.A.81/2003 Page 3 of 55 contracts of the Municipal Corporation of Delhi (MCD). He enrolled himself with the weight loss centre of PPL on 30th November 1994. SS was his counsellor. According to the prosecution, A-1 fell in love with SS which, he claimed, was reciprocated by her. As a result of A-1 being persuaded by SS, A-1 agreed to give a loan of Rs.12 lakhs to PPL on interest. DG was managing the finances of PPL. The interest payments by PPL for the aforementioned loan were made through her to A-1. SK was the Director of PPL.

3. The case of the prosecution is that A-1 was infatuated with SS and, although he was married, he told SS that if she did not become his, he would even go to the extent of killing her. A-1 is said to have been maintaining a diary with writings to the above effect. A-1 also suspected that SS was having an affair with SK. A-1 hired a private detective, Vikram Singh (PW- 8), on 20th March 1996 to investigate the movements of SS on the pretext of a potential matrimonial alliance for his brother Anil Gupta with her. Despite PW-8 telling A-1, after 15 days of investigation, that SS had a good moral character, A-1 insisted that SS was having an affair with SK and insisted on continuing the surveillance on SS.

4. A-1 planned to have a franchise of PPL opened in Bombay and that SS should run that franchise. On 5th June 1996, A-1 contacted PW-8 to tell him not to subject SS to surveillance on 6th June 1996 as it was her birthday but to continue it thereafter.

5. Meanwhile, in January 1996, air tickets were arranged by A-1 for SS and her family for travel to Bangalore and back. However, it transpired that this Crl.A.247/2000 & Crl.A.81/2003 Page 4 of 55 journey was not undertaken by her or her family. In the middle of February 1996, A-1 and his brother, Anil Gupta,

accompanied by Arvind Malik (PW-33) tried to follow SS to Tirupati Balaji. On 20th April 1996, SS and Shobha Kaul, wife of SK, visited Shirdi via Bombay and returned on 30th April 1996. A-1 and one of the co-accused, Ravi Parkash (A-8) (since deceased), also stayed at a hotel in Shirdi at around the same time so as to keep an eye on SS. The alleged conspiracy

6. The further case of the prosecution is that on 5th June 1996, the ten accused, including A-1, entered into a criminal conspiracy at Hotel Mohan, Ashok Vihar, Delhi to abduct and kill SK, SS and DG and thereafter, to cause the evidence of the offence to disappear, thereby committing an offence under Section 120B IPC (this was the first charge). The further case of the prosecution is that, under the pretext of discussing the opening of a new franchise of PPL at Vikas Marg, which would be financed by A-1, A-1 called for a meeting of SS, SK and DG at the MCD office at Okhla, from where A-1 used to operate, at 7.30 pm on 6th June 1996. According to the prosecution, A-1 to A-10 conspired to stage a kidnapping of A-1 and the three deceased SS, SK and DG. According to their plan, while SS, SK and DG would be forcibly injected with sedatives by Dr. Hemant Kalra (A-5), A-1 would not. While A-1 and SS would be kept together, the other two abducted persons SK and DG would be eliminated by them. Meeting at the MCD office and the abduction

7. When A-1 and the three deceased were holding their discussions at the CrI.A.247/2000 & CrI.A.81/2003 Page 5 of 55 MCD office, the co-accused came there, forcibly injected the three accused with the sedatives as planned. A-1 was also injected, but not with a sedative. The case of the prosecution, as set out in the charge sheet, was that SS, DG and A-1 were taken away in the steel-grey BMW car of A-1 bearing the registration No.DL1 E4725 which was being driven by co-accused persons, Kamal Kumar @ Pinki (A-9) and Vibhore Singh @ Lavi @ Chaudhary (A-3). They were first taken to Meerut. SK was taken away in his own car, a Maruti 1000 having the registration No.DL1 E1565 A third car, a Maruti 800, having registration No.UP80A3581 was also used by the accused in the commission of the crime. Murder of the deceased and disposal of the bodies

8. A-1 is stated to have initially reached Meerut at the house of one Mintoo (A-4) at Shastri Nagar. By this time SK had been murdered near Hodal in Haryana and his car abandoned somewhere there. Thereafter, along with the two other deceased, i.e. SS and DG, A-1 and the other accused proceeded to Agra and reached the house of one Ashwani Saini. There DG was killed by strangulation and her body was kept in the boot of the BMW car of A-1. Thereafter, SS was also murdered by strangulation; her dead body was also kept in the car of A-1 in a gunny bag. Ultimately, both bodies were thrown in the bushes near village Chambal near Gwalior.

9. The case of the prosecution is that SK was murdered between 6th and 7th June 1996 and his body was abandoned somewhere near Hodal in Haryana where it was eventually found. Close to his body, the Maruti 1000 car belonging to SK was also found abandoned alongside a kachha road. CrI.A.247/2000 & CrI.A.81/2003 Page 6 of 55 10. The bodies of SS and DG were found on 9th June 1996 on the roadside within the jurisdiction of PS Sarai Chola at Muraina. Both bodies were found in a highly decomposed state and had been partially eaten by animals. A-1 travelled to Bombay 11. According to the prosecution, A-1 and the other accused thereafter reached Bombay in A-1's BMW car. They first stayed at Centaur Hotel at Room No.466. While some of the accused returned, A-1 along with A-8 and Kamal Kumar (A-9) stayed at hotel Leela Kempinski in Room No.408. However, A-8 and A-9 also left there soon after leaving behind A-1. FIR by son of A-1 and seizures made 12. In the meanwhile, A-1's son Nitin Gupta, who was examined as DW-1, received a message from his mother at around 7:30 pm on 6th June 1996 on his mobile phone No.9811018640 stating that A-1 had not reached home. According to DW-1, he then returned home and waited for A-1 for about two hours. During that time, he also called his uncle Anil Gupta (the younger brother of A-1). Thereafter, DW-1 and Anil Gupta went to PS Okhla where Sub-Inspector Bal Kishan (PW-133) met them. The SI assured them that an FIR regarding A-1 having gone missing would be registered.

13. According to DW-1, after 6th June 1996, he started receiving threatening calls at his house for ransom money. Similar calls were also received by Anil Gupta. DW-1 is also supposed to have produced before the IO, the Drivers License (DL)

of SK which he stated he found at the site of his fathers office at MCD, Okhla. Acting on the above complaint, FIR No.340/1996 (Ex.PW-4/B) was registered by PW-133. An inspection was CrI.A.247/2000 & CrI.A.81/2003 Page 7 of 55 undertaken of the MCD office by the police and the following documents were recovered: i. ii. iii. iv. 5 pages of an agreement recording reinvestment in PPL by A-1. a large size Coca-Cola diary. pieces of injection ampoules of light yellow colour. torn pieces of papers with a note written by A-1 to the effect that he has been abducted and in case Rs.50 lakhs would not be given he would be murdered. v. torn pieces of a cheque.

14. These seizures were effected in the presence of a Constable Ashok Kumar (PW-4) and ASI Siri Upadhyay (PW-6). Meanwhile, Shobha Kaul (PW-83), wife of Dr. Kaul, was informed by the wife of A-1 that the DL of SK had been found at the MCD office and that DW-1 had lodged a missing report. PW-83 stated that her husband left in a Maruti 1000 on 6th June 1996 to Noida to shoot a serial.

15. The father of SS, Sukumar Saha (PW-10), told the police that SK and DG had come to his house between 6:30 and 7 pm on 6th June 1996 and SS had left with them in a car being driven by SK. He later called Shobha Kaul (PW-83) between 11 and 11.30 pm and told her that he was not aware of the whereabouts of SK, SS and DG after making enquiries. He later informed her of SK's DL having been found in the MCD office of A-1.

16. Rajesh Gupta (PW-11), the husband of DG, also called PW-83 when DG did not return by 7 pm on 6th June 1996 and there was no reply on the phone at her office. PW-11 was directed to PS C.R. Park and he was finally re- CrI.A.247/2000 & CrI.A.81/2003 Page 8 of 55 directed to PS Okhla where an FIR was registered. Arrest of A-1 and his medical examination 17. It is further the case of the prosecution that on the intervening night of 9th and 10th June 1996, information was received that A-1 was staying in Room No.408 at Hotel Leela Kempinski, Bombay. SI Balwant Singh (PW-

141) who was the Station House Officer (SHO) at PS Okhla Industrial Area contacted the SHO of PS Sahar, Bombay asking him to keep a watch on A-1. The SHO of PS Sahar, Bombay was also informed about the BMW car of A-1.

18. Thereafter, PW-141, along with SI R.S. Dhaka (PW-100) reached PS Sahar, Bombay around 2.30 pm and contacted the SHO of PS Sahar. In the meanwhile, Assistant Police Inspector (API) D.G. Sankhe who was posted at PS Sahar, Bombay and who had been asked not to arrest A-1 but keep a guard, reached the Leela Kempinski Hotel and contacted Sameer, the Manager there, who also confirmed that he had received a message to that effect. API D.G. Sankhe (who was examined as DW-16 on behalf of A-1) then came back to PS Sahar. It appears that DW-16 in fact recorded a statement of A-1 (DW-16/A).

19. It has come in the evidence of PW-141 that when he, along with PW- 100, reached PS Sahar at around 2:30 pm on 10th June 1996, A-1 was already found present there and he was interrogated there. Thereafter, A-1 was taken to Room No.408 at Hotel Leela Kempinski where four glasses and a bottle of whiskey were found on a table. The crime team was called and they picked up certain chance prints. On learning that A-1s BMW car CrI.A.247/2000 & CrI.A.81/2003 Page 9 of 55 was parked in the parking lot of the hotel, PW-141 directed PW-100 to take the car into possession. Leaving PW-100 back in Mumbai for further investigation, PW-141 returned to Delhi along with A-1.

20. A-1 was formally arrested on 11th June 1996 in Delhi. At 3.30 pm on 11th June 1996, PW-141 brought A-1 to the casualty ward at AIIMS, New Delhi for examination. Dr. S.K. Gupta, the Senior Resident who was posted there (and who was later examined as DW-13 on behalf of A-1), stated that A-1 was complaining of pain over the back of the chest and the sacrum area. A-1 also complained of chest pain and a phobia of living alone. On examination, DW-13 found tenderness over the back, injection prick marks on both arms of A-1. He found bruises on the posterior aspect of the chest and swelling on the back of the chest. He opined that the injuries were more than 48 hours old and were caused by blunt force. He described them as 'true bruises' which were not 'self-inflicted'. Investigation and framing of charges 21. During the course of investigation, A-1 is stated to have made a disclosure which led to the police searching the room of SS at PPL and recovering the six unused air tickets. The call detail records (CDRs) of the cell phone of DW-1, which was used by A-1, were collected. PW-10, the father of SS, produced a diary on 18th June 1996 which also contained two envelopes and

hand-written papers. The other co-accused persons were thereafter arrested and ultimately a charge sheet was filed on 6th September 1996 for the offences already noticed hereinbefore. A supplementary charge sheet was filed on 29th November 1996. CrI.A.247/2000 & CrI.A.81/2003 Page 10 of 55 22. The four charges framed by the trial Court on 4th March 1998 read as under: Firstly, that on and before 5.6.1996 at Mohan Hotel, Ashok Vihar, Delhi, you all had entered into a criminal conspiracy to abduct and murder Dr. Sunil Kaul, Ms. Sujata Saha and Mrs. Deepa Gupta and thereafter to cause the evidence of the commission of that offence to disappear with the intention of screening yourselves from legal punishment and thereby you committed an offence punishable U/s 120-B of the IPC within my cognizance. Secondly, between the evening of 6.6.96 to 9.6.96 you all in furtherance of your conspiracy had committed the murder of Dr. Sunil Kaul whose dead body was subsequently recovered from Hodal on 7.6.96 and the murder of Ms. Sujata Saha and Mrs. Deepa Gupta. Their dead bodies were recovered from Bhind Morena, M.P. and thereby you committed an offence punishable U/s 302 read with 120- B IPC, within my cognizance. Thirdly, in the evening of 6.6.96 from the office of Subhash Gupta at the MCD Building, Okhla, you all in furtherance of your conspiracy had abducted Dr. Sunil Kaul, Ms. Sujata Saha and Mrs. Deepa Gupta after sedating them in the three cars, i.e. BMW driven by accused Shubhash Gupta, Maruti 1000 driven by accused Kamal Singh and the Maruti 800 driven by accused Vibhor Singh and thereby you committed an offence punishable U/s 364 read with 120-B IPC, within my cognizance. Fourthly, between 6.6.96 to 9.6.96 you all in furtherance of your conspiracy had abandoned and thrown away the dead body of deceased Dr. Sunil Kaul which recovered on 7.6.96 from Hodal and the dead bodies of deceased Ms. Sujata Saha & deceased Mrs. Deepa Gupta which were recovered on 9.6.96 from Morena, M.P. and thereby caused the evidence of the commission of your offences to disappear with the intention of screening yourselves from legal punishment and thereby you committed an offence punishable U/s 201 read with 120-B IPC within my cognizance. CrI.A.247/2000 & CrI.A.81/2003 Page 11 of 55 23. There were separate additional charges under Section 411 IPC qua some of the co-accused being found in possession of stolen property. A total of 143 witnesses were examined on behalf of the prosecution. A-1s statement under Section 313 Cr

PC24 As far as the statement of A-1 under Section 313 Cr PC is concerned, it is relevant to note that A-1, apart from denying many of the circumstances put to him by the prosecution, gave certain specific replies to some of the questions. For e.g., he stated that he had been arrested on 10th June 1996 in Bombay by the Delhi Police and that the bill of Hotel Leela Kempinski was paid by the Delhi Police. He denied that the mobile phone of DW-1, used by A-1, was seized from A-1. He maintained that it had been seized from his house as informed to him by his son, DW-1.

25. A-1 submitted a written statement under Section 233 Cr PC in the trial court where inter alia he admitted that due to the good behaviour of SS I started loving her but there was no lust involved. She also respected me and showed affection towards me. Consequently she had virtually a hold over me. According to A-1, as they got closer, SS advised him that he should invest a big sum of money for a new branch of PPL at Vikas Marg; that he was promised to be paid 36% interest thereon and alternatively, he should operate a franchise at the new project. His statement thereafter reads as under: After Sujata Saha consulted Dr. Sunil Kaul and Deepa Gupta, it was decided that they would visit the MCD office Okhla to meet me at 7.30 p.m on 6.6.96. I had kept the draft agreement Agreement for Project Associate ready. I had also with me my cheque book and in the brief case there Crl.A.247/2000 & Crl.A.81/2003 Page 12 of 55 was Rs.7,25,000/- in cash. At about 7.30 p.m. Dr. Sunil Kaul came to MCD office, along with Sujata Saha and Deepa Gupta. We started talking about the deal. At the request of Dr. Sunil I drew a cheque for Rupees twelve lacs seventy-five thousand. The writing work has not yet complete, when suddenly four young men who were aged 25-26 years entered the room and surrounded us all at Pistol point. I did not know those young men. They stated beating us. Thereafter, they asked me to write a note on a paper Mera Apharan Ho Gia hain Pachas Lakha Rupia De Dena Nahi to Yeh Log Mujhe Jan se Maar Denge. Two young men gave an injection to Dr. Sunil and thereafter one injection each to Sujata and Deepa. They gave me an injection after which I lost senses. My car BMW was standing outside. They took me and my car at different places, which due to sedatives, which were given to me, I could not find out. Thereafter I was taken to some Hotel by three of them. Due to fear and sedatives I did not and could not raise any hue and cry, but I found that some doctor had

attended me in that hotel. Thereafter as I was completely exhausted they forcibly gave me liquor. As I had never taken liquor in my life I lost senses due to intoxication. I was awoken by Bombay Police and I came to know that I was in a hotel at Bombay. I was escorted by Bombay Police to P.S. Sahar. My car was also taken to police station. Bombay police interrogated me and I told them the aforesaid true story. On the same day Delhi Police arrived there and Inspector Balwant Singh interrogated me and I gave him the whole incident truly. He took me to Leela Hotel where some glass tumblers were lying on the table in room No.408. I was asked to give those glasses to him, which I did. The robbers had taken away my Rs.7,25,000/- which I had brought for Dr. Sunil. 26. In the above statement, A-1 also referred to his medical examination at CrI.A.247/2000 & CrI.A.81/2003 Page 13 of 55 AIIMS on 11th and 12th June 1996. A-1 stated that SS would call A-1 on the mobile phone of his son DW-1, which A-1 was using, and used to talk to A-1 for long periods. He admitted to giving SS a diary in which she expressed her feelings towards me and she sometimes used to show me those verses and prose. A-1 alleged that, while in custody, he was coerced to give his specimen handwriting by PW-141. Defence witnesses examined 27. There were as many as 17 witnesses for the defence. Among these were Nitin Gupta (DW-1), the son of A-1, Dr. S.K. Gupta of AIIMS (DW-13), two police officials from PS Sahar, API D.G. Sankhe (DW-16) and SI Sanjay Shankar Rao Shinde (DW-15) who confirmed the recording of the statement of A-1 by DW-16 on 10th June 1996. Chain of circumstances and trial Courts findings 28. In the impugned judgment of the trial Court, as many as 85 circumstances were culled out as forming a continuous chain and sought to be proved by the prosecution as pointing unmistakably to the guilt of the accused. Specific to the issue of motive, the following ten circumstances were attributed to A-1: (i) Subash Gupta a member of Personal Point and Sujata Saha was his counsellor. (ii) Purchase of Diamond Ring by Subash Gupta for Sujata Saha to be presented to her on her birthday. (iii) Purchase of air tickets for Sujata Saha and her family. (iv) Kept vigil on Sujata Saha through private detective in CrI.A.247/2000 & CrI.A.81/2003 Page 14 of 55 order to ascertain her antecedents. (v) Followed Sujata Saha at Balaji. (vi) Got followed Sujata Saha at Shirdi by Ravi Prakash where Sujata Saha visited in the month of April, 1996. (vii) Calls made from Cell Phone No.9811018640 at

residence of Sujata Saha on number of occasions. (ix) Writing letters showing his love for Sujata Saha. (x) Threat to kill her as reflected from writing in diary recovered later on after the death of Sujata Saha from her almirah which was presented to Sujata Saha by accused Subash Gupta. 29. The trial Court held that circumstance (i) above was proved by the prosecution. However, as regards the circumstance (ii) above, the trial Court held that what was proved was that a diamond ring was purchased but not that it was purchased by A-1. As regards circumstance (iii) above, it was held that while A-1 got purchased the air tickets for the journey from Delhi to Bangalore and back in the name of SS and her family, the journey was never undertaken by her and only the torn tickets were recovered from her office drawer.

30. Circumstance (iv) was held by the trial Court not to be proved. The trial Court was not inclined to believe that A-1 ever engaged PW-8 for keeping SS under surveillance. Likewise, circumstance (v), regarding A-1 having followed SS to Tirupati Balaji, was held not to be proved. Circumstance (vi) above was held again to be not proved. It was held that even if A-8 had stayed at Hotel Tirath, it did not mean that A-8 had followed SS and that too CrI.A.247/2000 & CrI.A.81/2003 Page 15 of 55 at the instance of A-1.

31. As regards circumstance (vii), the trial Court held that though, from the mere fact that calls were made, it could not be concluded that A-1 had threatened SS or expressed his love for her, in his statement under Section 313 Cr PC, A-1 had admitted that he had a soft corner for SS and she had a hold over him. Therefore, this showed that A-1 was in love with SS. However, the trial court did not accept that SS had reciprocated it. It observed: It has to be kept in mind that the position of Sujata Shah was vulnerable as she was merely an employee in a private concern in which accused Subash Gupta had made investment. She was not in a position to annoy or rebuke to a good client of the concern in which she was working. She could not have reflected her disappointment by throwing tantrums and could not convey her disapproval of the attempts made by Subash Gupta for developing an intimacy by maintaining silence. 32. As regards circumstance (viii) regarding letters written by A-1 to show his love for SS, the trial Court discussed the depositions of PWs-103, 108, 133 and 143. It analysed the writings

themselves in depth and concluded as under: It is established on record that accused Subash Gupta was obsessed with Sujata Shah and have a crush over her and with whom he wanted to develop intimacy and the efforts made by him in this regard were unfruitful but nothing beyond that. Even in the statement under section 313 Cr.P.C. accused Subash Gupta had admitted that he had an inclination short of lust and infatuation towards Sujata Shah. CrI.A.247/2000 & CrI.A.81/2003 Page 16 of 55 Other findings of the trial Court 33. The trial Court concluded that there was nothing to show that all the accused had met at Hotel Mohan at Ashok Vihar on 5th June 1996 to plan a conspiracy. On the question of Subash Gupta having a meeting at the MCD office and being last seen' in the company of the deceased, the trial Court concluded that the evidence did lend credence to the fact that a meeting did take place at the MCD office at Okhla on 6th June 1996 between A-1 and the three deceased. However, there was no evidence to show the presence of Dr. Hemant Kalra (A-5) at the MCD office or that he administered the injections to the deceased as alleged by the prosecution. It was held that: Though, presence of accused Subash Gupta, Doctor Suneel Kaul, Deepa Gupta and Sujata Shah at the MCD office at Okhla stands established and it also stands established that whereabouts of Suneel Kaul, Deepa Gupta, Sujata Saha not known thereafter and only their dead bodies were recovered later on, yet, presence of other accused persons at MCD office is not proved and there is no evidence on record in this regard. 34. As a result, the trial Court concluded that it stands proved on record that it is accused Subash Gupta who was last seen in the company of the three deceased. 35. On the issue of association between the accused persons, the trial Court came to the conclusion that although some of the accused may have been associated with each other, their involvement in the commission of the crime of killing the three deceased could not be established by the prosecution beyond all reasonable doubt. In this process, the trial Court examined the testimonies of the forensic witnesses and finger print experts. CrI.A.247/2000 & CrI.A.81/2003 Page 17 of 55 36. The trial Court then discussed the circumstance of recovery of the BMW car from Hotel Leela Kempinski, Bombay belonging to A-1. In particular, the trial Court discussed the recovery of the fibres (Ex.P-27 to P-30) from the car which matched with the fibre of the bed sheets on which bodies of SS and DG were wrapped. As regards the stay of A-1

and A-8 at the Leela Hotel, the trial Court concluded that while it stood established from the chance prints recovered from the glass in Room No.408 that A-1 stayed there and he had also been seen by a security guard, there was no evidence to show that A-8 was found in that room. The stay of the co-accused persons at the hotel during the period of the commission of the crime and their arrest was held not to have been proved in the manner alleged by the prosecution. Circumstances proved and not proved 37. The trial Court summarised the position regarding the proof of the 85 circumstances identified by it as under: 1. Accused Subash Gupta a member of PPL and Sujata Shah was her counsellor. This circumstance is proved.

2. Subash Gupta infatuated with Sujata Shah. This circumstance is also proved.

3. Subash Gupta purchased a diamond ring for Sujata Shah to be presented on her birthday on 6.6.96. This circumstance is not proved.

4. Subash Gupta purchased air tickets for Sujata Shah and her family. This circumstance is proved.

5. Subash Gupta engaged a private detective to have surveillance on her and ascertain her relations, if any, with Doctor Kaul. This circumstance is not proved on record. Crl.A.247/2000 & Crl.A.81/2003 Page 18 of 55 6. Followed Sujata Shah at Balaji. This circumstance is not proved.

7. Got followed Sujata Shah at Shirdi by accused Ravi Prakash. This circumstance is too not proved.

8. Subash Gupta used to make calls to Sujata Shah from his cell phone at her office as well as her residence. This circumstance is proved.

9. Wrote letters to Sujata Shah expressing her love. This circumstance is not proved.

10. Accused Subash Gupta threatened to kill Sujata Shah if he does not get her, which threat was conveyed through writings made in a diary presented by him to Sujata Shah. A diary was presented to Sujata Shah by SUBash Gupta, this part of

the circumstance is proved but as far as threat is concerned that is not proved.

11. The accused persons met at Hotel Mohan to carry out conspiracy of kidnapping and murdering Sujata Shah, Deepa Gupta and Doctor Kaul. This circumstance is not proved.

12. Meeting between Subash Gupta on one hand and Deepa Gupta, Sujata Shah and Doctor Kaul fixed at MCD office on 6.6.96. This circumstance is proved that the meeting was fixed on 6.6.96 at MCD office.

13. Accused Subash Gupta last seen in the company of deceased at MCD office. This circumstance is proved that accused Subash Gupta was last seen in their company at MCD office.

14. Doctor Kaul, Deepa Gupta and Sujata Shah whisked away from MCD office by all the accused persons- regarding this circumstance presence of accused person other than accused Subash Gupta at MCD office not established. CrI.A.247/2000 & CrI.A.81/2003 Page 19 of 55 15. Accused Hemant Kalra purchased Diazepam injections from Super Bazaar LNJP hospital and injected Doctor Kaul, Sujata Shah and Deepa Gupta. This circumstance is not proved.

16. Recovery of driving licence of Doctor Kaul from MCD office by Nitin Gupta. This circumstance is proved.

17. Accused Subash Gupta was not available since after the meeting at MCD office at his house and had disappeared. This circumstance is proved.

18. Accused Ravi Prakash a member of PPL. This circumstance is not proved.

19. Accused Subash Gupta was knowing accused Ravi Prakash. This circumstance is not proved.

20. Accused Ravi Prakash stayed at the house of accused Subash Gupta. This circumstance is also not proved on record.

21. Accused Deepak Dass, Kamal Shailey and Vijay Mohan arrested from Baroda. This circumstance is proved.

22. Association between Ravi Prakash and accused Kamal @ Pinki being arrested is a proved circumstance.

23. Association of accused Subash Gupta and other accused persons is not a proved circumstance.

24. Accused Ravi Prakash and Kamal @ Pinki involved in murder of one Zile Singh- separate trial is going on, as such, so no comments can be made whether they have been implicated falsely or rightly.

25. Accused Vijay Mohan had association with accused Deepak Dass, Kamal @ Pinki and Kamal @ Shailey, not proved. together from Meerut Crl.A.247/2000 & Crl.A.81/2003 Page 20 of 55 26. Recovery of two gold bangles from accused Deepak Dass at the time of his arrest, belonging to Sujata Shah is not a proved circumstance.

27. Recovery of revolver Ext. P.50 from accused Vinay is not a proved circumstance.

28. Accused Ravi Prakash stayed at Sweet Dream Hotel, Baroda 16.6.96 is not approved circumstance.

29. Accused Ravi Prakash stayed under the assumed name of Shard Gupta at Hotel Surya, Baroda from 10.6.96 to 11.6.96 is approved circumstance.

30. Accused Vinay had associated with accused Ravi Prakash being accused persons in case FIR No.949/96. Regarding this circumstance no comments can be given as the case is pending.

31. Accused Ravi Prakash under the assumed name of Sharad Gupta, Kamal @ Pinki and accused Subash Gupta stayed at Hotel Centaur Delhi on 5.5.96 in this circumstance stay of accused Ravi Prakash only proved .

32. Accused Ravi Prakash made calls at the residence of in laws of Kamal @ Shailey and at Bombay from Hotel Centaur, is not a proved circumstance.

33. Association between accused Vijay Mohan and Hemant Kalra and Vibhore @ lavi having arrested together from Gopi Nath Bazar is a proved circumstance.
34. Recovery of forged driving licence of accused Ravi Prakash in the name of Shard Gupta and having photograph of Ravi Prakash is a proved circumstance.
35. Recovery of car No.UP80A3581 from computerised parking IGI Airport is a proved circumstance. Crl.A.247/2000 & Crl.A.81/2003 Page 21 of 55 36. This car was bearing a fake number UP80A3581 and was a stolen property is a proved circumstance.
37. Finger prints of accused Vibhore @ lavi was found in the car is not a proved circumstance.
38. Digital Diary of accused Ravi Prakash and accused Deepak Dass found in the car is not a proved circumstance.
39. Accused Vibhore @lavi got filled petrol in this car from Highway Service Centre is not a proved circumstance.
40. This car got repaired at the Unique Car Scanners is not a proved circumstance.
41. Accused Ravi Prakash purchased an Exide Battery for car No.UP80A3581 is not a proved circumstance.
42. Recovery of car of Kamal bearing No.DL3CE1565 in which he went to attend the meeting at MCD office along with Deepa Gupta and Sujata Shah, found lying abandoned at Hodel is a proved circumstance.
43. Car No.DL3CE1565 of Dr. Kaul used by accused Kamal @Shailey, Hemant Kalra and Ravi Prakash and they got filled in petrol in this car from Avadh filling station is not a proved circumstance.
44. BMW of car of accused Subash Gupta found in the parking of Hotel Leela, Bombay is a proved circumstance.

45. Blood stained mat, blood stained fibres of cloth in which body of Deepa Gupta wrapped found in BMW car of accused Subash Gupta is a proved circumstance.
46. Accused Subash Gupta stayed at Hotel Leela Bombay is a proved circumstance. Crl.A.247/2000 & Crl.A.81/2003 Page 22 of 55
47. Accused Ravi Prakash stayed at Hotel Leela Bombay is a proved circumstance.
48. Accused Subash Gupta's finger prints found on glass which was found in Room No.408 Hotel Leela, Bombay is a proved circumstance.
49. Bill of payment regarding stay of accused Subash Gupta made the payment from his credit card is a proved circumstance.
50. Accused Subash Gupta stayed at House No.273 Shastri Nagar, the house of co-accused Vijay Mohan on 6.6.96 is not a proved circumstance.
51. Accused Ravi Prakash under the assumed name of Sharad Gupta stayed at Hotel Mayur on 5.6.96 is not a proved circumstance.
52. Stay of accused Ravi Prakash, Kamal @ Pinki and Subash Gupta at Hotel Centaur Bombay on 8.6.96 to 12.6.96. In this circumstance only stay of accused Ravi Prakash is proved in Centaur Hotel Bombay on 8.6.96 to 12.6.96.
53. Accused Ravi Prakash, Deepak Dass and Vijay Mohan stayed at Hotel Ajanta Ahmedabad on 12.6.96 from 3 am to 6.30 p.m. In this circumstance stay of accused Ravi Prakash is proved.
54. Accused Ravi Prakash, Deepak Dass and Vijay Mohan stayed at Hotel Teerath from 12.6.96 to 13.6.96. In this circumstance stay of accused Ravi Prakash is only proved.
55. Accused Vijay Mohan, Vibhore and Hemant Kalra stayed at Hotel Gautam Paradise on 6.6.96 is not a proved circumstance.
56. Accused Ravi Prakash under the assumed name of Sharad Gupta stayed at Hotel Surya Baroda in Room No.206 on 10.6.96 is not a proved circumstance. Crl.A.247/2000 & Crl.A.81/2003 Page 23 of 55
57. Recovery of Wrist Watch of Dr.

Kaul from accused Vinay belonging to Dr. Kaul is not a proved circumstance.

58. Recovery of Gold Kangan of Deepa Gupta deceased from the house of accused Kamal @ Shailey at his instance in pursuance of disclosure statement is not proved.

59. Recovery of Gold Kangan from Kamal @ Pinki from his house at his instance in pursuance of disclosure statement is not proved.

60. Recovery of cellular phone No.981108640 and battery charger of accused Subash Gupta from accused Vijay Mohan at the time of his arrest is not proved.

61. Recovery of revolver Ext. P.50 from accused Kamal @ Shailey is not a proved circumstance.

62. Recovery of Gold Bangles Ext. P.1

and 2 from accused Deepak Dass at the time of his arrest which Kangans were worn by deceased Sujata Shah is not a proved circumstance.

63. Recovery of gold Bangles from accused Hemant Kalra is not proved.

64. Recovery of gold bangles from accused Vibhore @ Lavi is not proved.

65. Accused Subash Gupta absconding after 6.6.96 is a proved circumstance.

66. Accused Ravi Prakash absconding circumstance.

67. circumstance.

68. Giving of call from Sheer Pur Pathak PCO booth at phone Accused Kamal @ Pinki absconding is also a proved is a proved CrI.A.247/2000 & CrI.A.81/2003 Page 24 of 55 No.6173166 of Amar Nath Gupta is not a proved circumstance.

69. Giving of phone call at No.6470485 installed at Dish Restaurant of which accused Subash Gupta is proprietor is a proved circumstance.

70. Giving of phone call at No.540041 PCO booth at Sheer Pur Pathak the residence of in laws of Kamal @ Shailey is not proved.

71. Accused Ravi Prakash pointed out the PCO booth at Sheer Pur Pathak is not a proved circumstance.
72. Accused Ravi, Deepak Dass, Kamal @ Shailey and Kamal @ Pinki stayed at Hotel Teerath, Har Ki Pauri on 13.6.96 and made telephone calls at the residence of in laws Kamal @ Shailey, at contact No.of accused Vijay Mohan and at contact number of accused JK (proclaimed offender) and at Rajinder Rattan Building. Making Phone calls are not proved while stay of accused Ravi Prakash at Hotel Teerath is proved.
73. Accused Ravi Prakash assumed the name of Sharad Gupta and hid his true identity is a proved circumstance.
74. Accused Vibhore @ Lavi led the police party to 35, Dayal Bagh, Adnan Bagh in pursuance of his disclosure statement is not proved.
75. Accused Subash Gupta in pursuance of disclosure statement led to House No.213 Shastri Nagar, Meerut, 35 Dayal Bagh, Adnan Bagh is not a proved circumstance.
76. Accused Subash Gupta in pursuance of his disclosure statement led the police party to the place where dead body of Sujata Shah and Deepa Gupta found is not a proved circumstance.
77. Accused Kamal @ Shailey in pursuance of his disclosure statement let the police and pointed out the place where dead body of Doctor Kaul found is not a proved circumstance. CrI.A.247/2000 & CrI.A.81/2003 Page 25 of 55
78. Accused Kamal @ Shailey in pursuance of his disclosure statement led the police and pointed out Avadh filing station, is not proved.
79. Accused Ravi Prakash in pursuance of his disclosure statement led the police party to Rajinder Rattan Building, Bombay is proved.
80. Accused Ravi Prakash in pursuance of his disclosure statement led the police and pointed out Sagar Chand Jewellers is a proved circumstance.

81. Accused Ravi Prakash in pursuance of his disclosure statement led the police party to the place where from dead body of Doctor Kaul was recovered and his car found, and places where dead body of Deepa Gupta and Shah were found. This circumstance is not proved.

82. Accused Ravi Prakash in pursuance of his disclosure statement led the police party to Padmawati Building, Bombay is not a proved circumstance.

83. Accused Ravi Prakash led the police party in pursuance of his disclosure statement to the house of accused Subash Gupta is not a proved circumstance.

84. Accused Ravi Prakash in pursuance of his disclosure statement led the police party to hotel Surya, Hotel Chetan and hotel Garodia is a proved circumstance.

85. Accused Hemant Kalra led the police party to Super Bazar LNJP Hospital is a proved circumstance. 38. As far as A-1 was concerned, the following circumstances were held to be proved: (1) A-1 wanted to have SS having fully exploited her plight and CrI.A.247/2000 & CrI.A.81/2003 Page 26 of 55 without caring for her reaction. Thus, the motive qua A-1 stood established. (2) A-1 was last seen in the company of the three deceased. (3) A-1 was thereafter traced to Hotel Leela Kempinski, Bombay along with his car after the police was informed by Anil Gupta regarding his stay there. (4) A-1 made a disclosure about using the phone of STD booth near Hotel Chetan. Since he had pointed out the said place, this portion of his disclosure statement was admissible under Section 27 of the Indian Evidence Act, 1872 (IEA). The pointing out was also relevant as conduct under Section 8 IEA. (5) Recovery of blood stained threads and fibres matching with the bed sheets which were used to wrap SS and DG from the BMW car of A-1.

39. The trial Court held that the above circumstances formed a complete chain, consistent with the guilt of A-1. The trial Court disbelieved the defence put forth by A-1. It was inter alia observed that the two police officers from PS Sahar who deposed in his favour as DWs had colluded with him. The present appeals 40. During the pendency of these appeals, Kamal Singh @ Shailey, (Respondent No.2 in the State's appeal and A-2 in the trial) and Ravi Prakash (A-8) expired.

Respondent No.10, Jainender Kumar Tyagi, was a proclaimed offender even during the course of entire trial and continued to CrI.A.247/2000 & CrI.A.81/2003 Page 27 of 55 remain as such. Effectively therefore, the States appeal is against A-1, A-3 to A-7 and A-9. Submissions on behalf of A-1 41. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of A-1 (Appellant in Criminal Appeal No.247/2000 and Respondent No.1 in Criminal Appeal No.81/2003), first referred to the charges framed. He submitted that: (i) the entire case of the prosecution was projected as beginning with a conspiracy between all the accused to eliminate the three deceased whereas the charge sheet depicted it as conspiracy to only eliminate SK whom A-1 saw coming in the way of having sole access to the deceased SS. It is submitted that there was in fact no clear delineation of the motive of all the accused to conspire to kill the three deceased. (ii) In any event, the charge of conspiracy completely failed as there was no evidence to prove it. In other words, the prosecution was unable to prove the first charge, viz., that on 5th June 1996 a meeting took place at Mohan Hotel in Ashok Vihar in which all the accused participated and where a conspiracy was hatched to kill the three deceased by staging a kidnapping of the three deceased and A-1. Once this charge failed, the very basis of the prosecution case had to fail as in a case based wholly on circumstantial evidence, motive formed an important circumstance without which the chain would not be complete. (iii) Even if A-1 had admitted to his being in love with SS, there was CrI.A.247/2000 & CrI.A.81/2003 Page 28 of 55 absolutely no evidence to show that he wanted her killed. Even according to the prosecution, A-1 had purchased a ring for her for her birthday, i.e. the day he called her and SK and DG at the MCD Office. Therefore, it was improbable that he also wanted to somehow kill her. On the contrary, the charge sheet stated that in the staged kidnapping, the plan was to have A-1 and SS kept together and to eliminate SK. Therefore, what was sought to be proved by the prosecution at the trial was not what was stated in the charge sheet. Therefore, there was no motive for the crime proved by the prosecution, for A-1 to kill SS. (iv) In any event, there was absolutely no motive for the killing of the third deceased DG. (v) Of the 85 circumstances outlined by the trial Court, only 15 were held to be proved qua A-1. These 15 circumstances did not form a complete chain and did not unerringly point to the guilt of A-1 for the four charges framed against him. (vi) The last seen

evidence held by the trial Court to have been proved was in fact not proved. While the evidence put forth by the prosecution sought to prove that A-1 and the three deceased were at the MCD Office at Okhla on the evening of 6th June 1996, by no means did the prosecution prove that it was A-1 alone who was with the three deceased to the exclusion of everyone else. This was not even the case of the prosecution. (vii) The trial Court failed to appreciate how, on his own, without the Crl.A.247/2000 & Crl.A.81/2003 Page 29 of 55 involvement of the other accused (who were acquitted by the trial Court), A-1 could have possibly abducted the three deceased, killed each of them, thrown their bodies at different places and then reached Mumbai with injection prick marks in both his arms and injuries in front and rear of his chest. There was a huge, yawning gap in the prosecution story which, according to the trial Court, formed the complete chain of circumstances qua A-1 and, therefore, the trial Court gravely erred in convicting him for the offence under Sections 302/364/411 IPC.

42. Mr. Mathur then focussed on each of the circumstances held to be proved by the trial Court and pointed out that the analysis of the evidence by the trial Court was flawed in relation to some of them. Certain crucial details were either left out or presumed by the trial Court. For instance, when the trial Court concluded that the accused had made a disclosure statement regarding his making a call outside Chetan Hotel, the trial Court in fact erred because that disclosure was not made by A-1 but by A-8. The pointing out was also by A-8 and not by A-1.

43. Mr. Mathur further submitted that the trial Court failed to examine whether the alternate theory put forth by the accused was plausible, particularly with reference to the BMW car being found at Hotel Leela Kempinski, Mumbai. There were some circumstances, according to Mr. Mathur, which were not discussed at all in the judgment. For instance, circumstances 17 and 65 to the effect that A-1 had absconded after the meeting at the MCD office at Okhla on 6th June 1996 was not discussed in Crl.A.247/2000 & Crl.A.81/2003 Page 30 of 55 the judgment, while the circumstance of the other accused absconding was discussed.

44. Mr. Mathur pointed out that the 17 defence witnesses examined included certain crucial witnesses who ought to have been examined by the prosecution.

These included Dr. S.K. Gupta (DW-13) who had medically examined A-1 at AIIMS on 11th June 1996 soon after he was brought to Delhi and two police officers of PS Sahar in Mumbai, DW-15 and DW-16. Even Nitin Gupta, the son of A-1, who had given the complaint in the first instance on the basis of which the case-FIR was registered was, for some reason, not examined as a prosecution witness. He had to be examined as DW-1. Further, the brother of A-1, Anil Gupta, who is supposed to have informed the police about the presence of A-1 at Hotel Leela in Mumbai was named as PW but finally dropped by the prosecution. There was no satisfactory explanation for this. If the evidence of DWs was carefully analysed, then the defence was probablised. There was no reason why the defence evidence should be discarded. Submissions on behalf of the prosecution

45. Ms. Anita Abraham and Ms. Radhika Kolluru, the learned Additional Public Prosecutors (APPs), appeared on behalf of the State in both the appeals and submitted as under: (i) While motive was an important circumstance, the mere failure to prove motive would not be fatal to the case of the prosecution if all the other circumstances were established beyond reasonable doubt. (ii) The statement of A-1 under Section 313 Cr PC itself was an CrI.A.247/2000 & CrI.A.81/2003 Page 31 of 55 admission of his being infatuated with SS and being under her control. This was an important element of the motive concerning his involvement in the crime. (iii) The evidence clearly showed that A-1 had called for a meeting with the three deceased at the MCD office in Okhla from where he operated. Therefore, the prosecution was able to successfully show that it was A-1 who was last seen with the three deceased. (iv) The recovery of the car of SK near P.S. Hodal, the recovery of the Maruti 800 outside the IGI airport used in the commission of the crimes, and the recovery of the BMW car of A-1 outside Hotel Leela in Mumbai were all clearly proved by the prosecution. (v) That the death of the three deceased was homicidal and unnatural was also clearly proved by the prosecution. (vi) The BMW car belonging to A-1 was found with a blood-stained mat. Although the blood group was unable to be matched with any of the deceased, the blood-stained fibres and the fibre found in the BMW car matched with the fibres of the cloth in which body of DG was wrapped. This was an important circumstance linking A-1 with the offence. (vii) The prosecution was able to prove that it was A-1 who stayed at Room No.408 in Hotel Leela, Mumbai. It

was able to prove that his specimen finger prints matched the chance prints found on the glass in CrI.A.247/2000 & CrI.A.81/2003 Page 32 of 55 Room No.408 at Hotel Leela. The bills for his stay were paid for by the credit card of A-1. Further, A-1 was identified by security guard, Prabhakar Raghu Dhote (PW-25). Apart from this, in his statement under Section 313 Cr PC, A-1 did not dispute that he was at Hotel Leela in Mumbai. (viii) Qua each of the other accused, there was sufficient evidence to show their involvement and the trial Court erred in holding those circumstances to not to be proved. Submissions on behalf of A-3 to A-5 46. On behalf of Vibhore Singh @ Lavi, Vijay Mohan Sharma @ Minto, Dr. Hemant Kalra (A-3 to A-5 and Respondent Nos. 3 to 5 in the States appeal), submissions were made by Mr. Ravinder Tyagi, the learned counsel as under: (i) From the statement of the witnesses examined by the prosecution to prove the first charge of meeting being held by the accused at Hotel Mohan in Ashok Vihar on 5th June 1996, no evidence emerges to show that any of the accused persons was staying at Hotel Mohan, Ashok Vihar at any point of time. (ii) As regards meeting at the MCD office, Okhla the relevant witnesses were PWs 1, 4, 6, 10, 11, 22, 28, 82, 83. These witnesses did not speak about seeing any of the accused with the A-1 at the MCD Office. Seema Shah Ahuja (PW-28), an employee of PPL, Sukumar Saha (PW-10), father of SS, Rajesh Gupta (PW-11), husband of DG, and Dr. Shobha Kaul (PW-83), wife of SK, all only CrI.A.247/2000 & CrI.A.81/2003 Page 33 of 55 deposed that the three deceased had left for MCD office. They were not witnesses to prove who else was present at the MCD office. (iii) What was found in the MCD office by the police also did not connect any of the accused as far as their presence in the MCD office was concerned. Even the presence of A-5 could not be proved. DW- 16 who was in charge of the medical store could not say whether it was A-5 who had purchased the injections from his shop. The prosecution had failed to collect any evidence from the LNJP Hospital where A-5 was supposed to be working. There was no evidence to show that the injection vials that were recovered from the MCD office on 6th-7th June 1996 were in fact deposited in the police malkhana till 8th June 1996. Even in the scaled site plan, the presence of ampoules of saline outside the site office of MCD office was not shown. (iv) No examination of SK's body for presence of diazepam was undertaken. There were also no injection prick marks on the body of SK recovered

a day after the murder. (v) As far as A-4, Vinay Mohan, was concerned, it is a case of wrong person being roped in. One Vijay Mohan from Baroda ought to have been arrested and not Vinay Mohan. The evidence of PW-13 and PW- 16 show that A-8 and A-9 were arrested together and Deepak Das @ Kamal @ Shailey (A-2) and Vinay Kumar were arrested. The two prosecution witnesses examined to show the association of the accused, i.e. PW-16 and PW-38 (Dr. Yash Rawat) were both declared hostile and did not support the prosecution. Crl.A.247/2000 & Crl.A.81/2003 Page 34 of 55 (vi) There was also discrepancy in the time of arrest of these accused. It is pointed out that A-6 was already lodged in a jail in Meerut between 20th March 1996 and 11th June, 1996 and, therefore, the question of his absconding or being arrested by the prosecution in the manner indicated did not arise. (vii) Vijay Mohan was, in fact, in a lock up between 22nd and 23rd June 1996 and it is at that time that the mobile phone used by A-1 is supposed to have been recovered from him. This contradicts the fact that even on 13th June 1996 the police knew the cell number and had sent SI Ram Lal to collect the CDRs. This proved that the phone and battery chargers were planted on accused Vijay Mohan and it in all probability were recovered from the residence of A-1 since it was throughout in the possession of DW-1. Law relating to circumstantial evidence 47.1 Before commencing the discussion of the submissions, this Court would like to recapitulate the well settled principles governing circumstantial evidence. In State of Tamil Nadu v. Rajendran (1999) 8 SCC679 it was held:

"... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused."

47.2 In Trimukh Maroti Kalan v. State of Maharashtra (2006) 10 SCC Crl.A.247/2000 & Crl.A.81/2003 Page 35 of 55 681, the Supreme Court held:

"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite

tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence. that 47.3 The importance of their having to be a continuity in the chain of circumstances and their having to be viewed as a whole was emphasised in Ram Avtar v. State 1985 Supp SCC410 in the following words:

"...circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. This, however, does not mean that there is any particular or special method of proof of circumstantial evidence. We must, however, guard against the danger of not considering circumstantial evidence in its proper perspective, e.g., where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, otherwise the very concept of proof of circumstantial evidence would be defeated."

Analysis and Reasons 48. The Court would first like to discuss the first charge, viz., that all the accused met at Hotel Mohan in Ashok Vihar on 5th June 1996 to hatch a plan to eliminate the three deceased. The trial Court has, after a very detailed analysis of the evidence, come to the conclusion that this circumstance is not proved. CrI.A.247/2000 & CrI.A.81/2003 Page 36 of 55 49. A careful perusal of the charge sheet as well as the supplementary charge sheet shows that the case put forth by the prosecution is only that all the accused met to plan to eliminate SK. There was no plan, even according to the prosecution, to eliminate SS or DG. In order to prove this charge, the prosecution had to first prove that A-1 was madly in love with SS and wanted to get her at any cost. He was prepared to eliminate SK who was seen by him as coming in the way. The Court finds that in outlining the circumstances in this regard, the trial Court has not followed any particular chronological sequence. The circumstances as outlined by the trial Court in this regard, read as under: 1. Accused Subash Gupta a member of PPL and Sujata

Saha was her counsellor.

2. Subash Gupta infatuated with Sujata Saha.

3. Subash Gupta purchased a diamond ring for Sujata Saha to be presented on her birthday on 6.6.96.

4. Subash Gupta purchased air tickets for Sujata Saha and her family.

5. Subash Gupta engaged a private detective to have surveillance on her and ascertain her relations, if any, with Doctor Kaul.

6. Followed Sujata Saha at Balaji.

7. Got followed Sujata Saha at Shirdi by accused Ravi Prakash 8. Subash Gupta used to make calls to Sujata Saha from his cell phone at her office as well as at her residence.

9. Wrote letters to Sujata Saha expressing her love. CrI.A.247/2000 & CrI.A.81/2003 Page 37 of 55 10. Accused Subash Gupta threatened to kill Sujata Saha if he does not get her, which threat was conveyed through writings made in a diary presented by him to Sujata Saha.

11. The accused persons met at Hotel Mohan to carry out conspiracy of kidnapping and murdering Sujata Saha, Deepa Gupta and Doctor Kaul. 50. Apart from the fact that the above circumstances do not follow any chronological sequence, it can immediately be seen that the circumstance of purchasing the diamond ring for SS to be presented to her on 6th June 1996 is actually subsequent to the purchase of the air tickets and following SS to Tirupati Balaji. The circumstance of keeping her under surveillance by engaging PW-8 is subsequent to following her at Shirdi. The circumstance of making calls and writing letters to SS did not follow any particular sequence. There are no particular dates.

51. While circumstance No.1, that A-1 was a member of PPL and SS was his Counsellor definitely stands proved, inasmuch as it is not even denied by A-1, what is not proved is that he in fact threatened to kill her. This threat is supposed to be found written in diary (Ex.PW-10/A) which is produced by Sukumar Saha

(PW-10) on 18th June 1996 while searching for documents of his daughter in the almirah of his elder daughter Swarna Saha. The other witness who deposed about the recovery of this diary was Rakesh Manocha (PW-143), the brother-in-law of SS. Further, as pointed out by the trial Court, this circumstance was only partly proved. Two hand-writing experts were examined, one by the prosecution (PW-108) and the other by the defence (DW-2). CrI.A.247/2000 & CrI.A.81/2003 Page 38 of 55 52. As noted by the trial Court, the questioned writings to the effect If you do not become mine, I will murder you and same time I will make to suicide myself are Q-31 and Q-29. In the report of PW-108 (Ex.Q-108/F-1) it was opined to be in the handwriting of A-1. In this regard, specific finding of the trial Court is as under: So far as Q. 31 is concerned where it written that if you not becomes mine I murdered you and same time I meet to suicide myself is concerned: in my opinion the same cannot be read in isolation from the contents of the rest of the diary and should not be extracted and read separately so as to constitute a threat. As in the entire diary and in the question writing the accused Subash Gupta has not used any harsh words against Sujata Shah and has only expressed his fondness and obsession and intention to have intimacy with her. Even in Q.31 besides stating that he will murder her he has also written that he will also commit suicide which at best can be expression of frustration because of love. Literal meaning to such words cannot be extended as it is only by way of expression of ones feelings. More important in this regard is the fact that this diary as per the prosecution was found in the almirah of Sujata Shah and naturally it is she who must have placed it there and to whom the diary it can be said, was handed over by Subash Gupta himself or through some other person. But the very fact that Sujata Shah kept that diary in an almirah and herself had not taken the wordings in Q. 31 in its literal sense as P.W.10. The father of Sujata Shah had admitted that Sujata Shah never complained with regard to any threat on behalf of accused Subash Gupta, and had rather taken it at best to be an overreaching by a customer with the concern where she was employed. 53. The above analysis appears to be plausible and reasonable. In fact, when these writings are seen in the proper context, it is not as if A-1 wanted to eliminate SS. It rather depicted his infatuation with her. Even otherwise, it CrI.A.247/2000 & CrI.A.81/2003 Page 39 of 55 seems completely contradictory that if A-1 wanted to eliminate SS, he would be purchasing a

diamond ring to present it to her as a gift on her birthday i.e. 6th June 1996. All that it does show, as already noticed by the trial Court, is that A-1 was in fact obsessed with SS but not to the extent of wanting to eliminate her. Therefore, the Court is unable to agree with the trial Court that there was a motive for A-1 to eliminate SS.

54. As far as the motive for eliminating DG is concerned, there is not a shred of evidence anywhere in the entire record, whereby the prosecution has been able to prove that such a motive did exist. The trial Court also failed to find any motive whatsoever for the killing of DG much less any conspiracy between the accused persons to that effect.

55. None of the 11 circumstances regarding the motive of A-1 to eliminate SS was proved. As pointed out by the trial Court, the prosecution was only able to show that A-1 was infatuated with SS but that this was short of lust as admitted by himself in his statement under Section 313 Cr PC.

56. With this background, if one revisits the first charge, viz., the conspiracy at Hotel Mohan, one of the witnesses to prove this was the Manager of the hotel, PW-121, Anil Saluja. A careful perusal of his evidence reveals that a person in the name of Sharad Gupta had stayed on 5th June 1996 giving his address as 186 Civil Lines, North Muzaffarnagar U.P. He was only able to prove the bills dated 26th April, 27th April, 3rd May 1996 relating to Room No.110 which was booked in the name of Sharad Gupta. He said nothing about the stay of any of the accused persons at the hotel at any point in time. CrI.A.247/2000 & CrI.A.81/2003 Page 40 of 55 57. The second witness from Hotel Mohan was Ganga Sagar Shukla (PW-122). He did not recognise any of the accused as being present at the hotel. He was working there as a waiter. In other words, he turned hostile and failed to support the prosecution. The third witness was Sandeep Rana (PW-

123) who worked as a Cashier at the same hotel. All he could say is that the police took into possession the Booking Register. He too did not support the prosecution in any other manner. As a result, none of the three witnesses examined by the prosecution to prove the first charge supported the case of the prosecution.

58. The learned APPs for the State were unable to show what was the substantial evidence led by the prosecution, and ignored by the trial Court, as far as the first charge is concerned. The above evidence clearly was wholly inadequate to prove the first charge.

59. If the said charge, viz., the charge of conspiracy to kill the three accused, punishable under Section 120-B IPC, fails then the entire edifice of the prosecution case gets severely shaken. This was a case involving the murder of three adults, one male and two females. If the accused, 10 in number, had not come together to plot their killing as was alleged by the prosecution, then the motive for the crime itself disappeared. This is a glaring aspect which cannot be overlooked.

60. Even before this Court, the prosecution has not been able to improve upon what was placed before the trial Court. It has not been able to show that the analysis of the evidence of the trial Court and its conclusion that the charge of conspiracy is not proved suffers from perversity. The Court is, Crl.A.247/2000 & Crl.A.81/2003 Page 41 of 55 therefore, unable to come to a conclusion different from that reached by the trial Court in this regard.

61. With there being no proof of the motive for the crime, the Court is unable to appreciate how when it came to discussing the role of A-1, the trial Court could simply conclude that there was motive for A-1 to eliminate SS. In this regard it must be pointed out, at the cost of repetition, that the prosecution story was not that A-1 had motive to kill SS but that he had a motive to kill SK. There is nothing in the charge sheets which even remotely points to any conspiracy to kill either SS or DG. Therefore, the starting point for the trial Court to convict A-1, viz., that he had a motive to kill the three deceased is itself flawed.

62. As regards the motive to kill SK, the trial Court itself found that the prosecution story that A-1 suspected that SK was having an affair with SS and engaged PW-8 to undertake a surveillance of her activities was held by the trial Court not to be proved. The learned APP for the State relied on the evidence of Kamal Singh (PW-8) in this regard.

63. This Court has, with the assistance of learned counsel of the parties, perused the evidence of PW-8. He is unable to explain how no form was filled by A-1 for engaging his services. This despite stating that normally all columns, when a form is filled for engaging us, are filled up. There is not even a signature of A-1 on the form. PW-8 was unable to produce any income tax returns filed by him. The Form Ex.PW-8/A which was produced by him to show that he was engaged by A-1 was filled in his own hand. It is further strange that PW-8 states that he handed over the reports to A-1 and CrI.A.247/2000 & CrI.A.81/2003 Page 42 of 55 that he did not retain any copy thereof. No such report was recovered from A-1. PW-8 further states that I have not carried the investigation of my own. It is my employees who have carried out the investigations. I do not know whether those persons who were carrying out the investigations were examined by the police or not. All these raise serious doubts as to whether in fact any such investigation was undertaken by PW-8 at the behest of A-1. If indeed the employees of PW-8 had carried out such investigations, then the prosecution had to explain why such employees were not examined as prosecution witnesses.

64. Further, although PW-8 states that he charged Rs.4,000/- per day and was engaged for 15 days, he was able to prepare a report only after receiving Rs.30,000/- from A-1. PW-8 was also unable to produce copies of any receipt that he may have issued for the payments made to him by A-1. His understanding of who could be said to be of a good character also raises serious doubts on whether in fact PW-8 carried out any investigation.

65. On an analysis of the evidence of PW-8, the Court is inclined to concur with the trial Court that this is not at all a trustworthy or reliable witness. He has been rightly disbelieved by the trial Court. The net effect is that the circumstance put forth by the prosecution that A-1 was upset or suspected that SK was having an affair with SS and was coming in the way, has not been proved at all by the prosecution. The important element of a motive for A-1 to eliminate SK has not been proved by the prosecution.

66. It must be recalled that according to A-1, he was lured into investing more money into PPL by SS. His incentive was that he was going to be paid

Crl.A.247/2000 & Crl.A.81/2003 Page 43 of 55 36% interest. It was for this reason that a draft agreement was drawn up and was going to be discussed on 6th June, 1996 in the evening at the MCD office at Okhla. This is perfectly plausible but is clearly inconsistent with the prosecution story that a meeting was called only to stage a kidnapping of three deceased. The evidence on record in fact does not prove that the meeting was called by A-1 for staging a kidnapping.

67. As regards the meeting at the MCD office, the evidence of Seema Shah (PW-28) an employee of PPL proves that DG had informed her that she, along with SK and SS, had to meet A-1 at 7 pm. Likewise, Sukumar Saha (PW-10) also proves that SK and DG had come to his house to pick up SS between 6.30 and 7 pm on 6th February, 1996. This is concurred with by PW-11, Rajesh Gupta and PW-83, Shobha Kaul. All of this is consistent with the statement of A-1 in Section 313 of Cr PC that he did call for a meeting at the MCD Office to discuss the agreement regarding opening of a new branch of PPL at Vikas Marg. Therefore, this hardly advances the case of the prosecution as far as the conspiracy to stage a kidnapping is concerned. There is no shred of evidence to prove that.

68. The presence of SK at MCD Office is also strengthened by the fact that his driving license (DL) was found there. This is spoken to by ASI CB Upadhyay (PW-6). It must, however, be noted that the prosecution case is that DW-1 handed over to the police the DL of SK. However, this is denied by DW-1. Be that as it may, the fact remains that there is nothing to show that all the accused were present at the MCD Office at the time when so-called staged kidnapping happened. The version of A-1, on the other hand, is Crl.A.247/2000 & Crl.A.81/2003 Page 44 of 55 that they were suddenly surrounded by

young men at pistol point who started beating them and asked A-1 to write a ransom note. He further stated that two of them gave a poisonous injection to SK and one each to SS and DG. They also gave A-1 an injection, which was not poisonous.

69. The medical examination of A-1 at the AIIMS on 11th June 1996 after his arrest, was done by DW-13 who has clearly spoken about noticing two injection pricks on both his arms. It also showed the presence of diazepam in his blood.

The injuries on his front chest and the rear of his chest are also consistent with the fact that he himself would have been under sedation and not aware of what was happening till he became conscious and found himself at Hotel Leela. The Court is, therefore, not able to agree with the trial Court when it states that A-1 is last seen in the company of the three deceased to make it appear that there was no one else at that time. The case of the prosecution is not that it is A-1 alone who was with the three deceased at the MCD Office. The case of the prosecution is that all of the ten accused were there pursuant to the conspiracy hatched by them on 5th June 1996 at Hotel Mohan in Ashok Vihar. Therefore, it is futile for the prosecution now to try and demonstrate that A-1 could have done the entire crime on his own to the exclusion of all the accused.

70. To be fair to the State, it is in appeal before this Court only because it sees the futility of the above result brought about by the judgment of the trial Court. It is either that all the accused did get together to commit the murder of the three deceased or that none of them did. It does not stand to logic that A-1 could somehow have, on his own, got the three deceased abducted, Crl.A.247/2000 & Crl.A.81/2003 Page 45 of 55 murdered and their dead body disposed of. It is inconceivable how such a result could have been arrived at by the trial Court which runs contrary to the entire story of the prosecution.

71. Where there are multiple murders involved and a complex set of facts where abduction happened at one place and the murders in different locations and the bodies being thrown in different locations, it is impossible for one person to single-handedly do all of those acts. Therefore, even for this reason, the judgment of the trial Court insofar as it convicts A-1 for the aforementioned offences does not stand to reason at all.

72. The third circumstance that has been held by the trial Court to be proved against A-1 is about his being absconding and being traced ultimately at Hotel Leela Kempinski in Mumbai. In this regard the conclusion drawn by the trial Court that the two policemen at PS Sahar, i.e., DW-15 and DW-16 were colluding with A-1 is, to say the least, completely without any basis. The evidence of both those witnesses shows that there was no need for them to be supporting A-1 against the

Delhi Police. They appeared to be speaking from the report. Indeed, they had recorded the statement of A-1 which was marked in evidence. Whether recording of such a statement was necessary is solely beside the point. The fact of the matter was that such a statement was in fact recorded.

73. In that statement, A-1 explains that he was unconscious and unaware of what transpired between 6th and 10th June 1996 when he was being examined by them. This is completely consistent with the version of A-1 and could not have been simply brushed aside by the trial Court. Even the CrI.A.247/2000 & CrI.A.81/2003 Page 46 of 55 learned counsel for the State has no logical or convincing explanation for the failure of the Delhi Police - who admit to going to Bombay and meeting the officials of PS Sahar as seen through the evidence of PW-141 and DW-100 - to produce the witnesses from PS Sahar. Why the prosecution also did not produce DW-13 as its witness when he was the Doctor who examined A-1 at AIIMS on 11th June 1996 soon after his arrest is again not satisfactorily explained. This was a crucial piece of evidence which would have completed the chain and given a clear picture as to the circumstances under which A-1 was apprehended at Hotel Leela in Mumbai.

74. The Court repeatedly enquired of the learned APP for the State whether there existed a possibility that someone else, other than A-1, could have driven the BMW car from the MCD office to Hotel Leela in Bombay. The Court has not been given a satisfactory answer in this regard.

75. As regards the recovery of blood stained mat from the car and fibres which purportedly were similar to the bed sheet in which the dead body of DG was wrapped, the fact to be noticed is that the car remained in the custody of the police between 10th June 1996 (when it was found) and 13th June 1996 (when it was brought back to Delhi) and examined by the CFSL at Delhi. That the BMW car has been in the custody of the police and that the recoveries of these articles, namely, blood stained mats and fibres being made not in the presence of A-1 or any independent witnesses, such recoveries lose all significance.

76. This could not be said to be recoveries pursuant to any statement made or disclosure made by A-1 under Section 27 of the Act. It was made at the

Crl.A.247/2000 & Crl.A.81/2003 Page 47 of 55 time when the vehicle was entirely in the control and custody of the police. Therefore, not much importance can be attached to such recoveries. While on this circumstance, it should also be noticed that the blood stains on the mat are not shown to match the blood group of any of the deceased persons. The report of Dr. O.S. Srivastava (PW-96) is relevant in that regard. Further Dr. J.D. Gupta, CFSL (PW-93) examined the fibres lifted from the BMW car. While he said that these fibres were similar with those in the bed sheet in which DG's body was wrapped, he did not state that the fibres were identical. To a similar effect is the opinion of C.K. Jain which was sought to be proved by Investigating Officer (PW-141) under Section 293 Cr.P.C.

77. Consequently, merely because the above blood stained mat and fibres were recovered from the car belonging to A-1, it cannot be said that A-1 was the one who drove the car with those articles in the car and with the knowledge of the incriminating nature of those articles. There is a huge gap in the prosecution story in this regard which is not sought to be filled up with any cogent evidence.

78. As regards the chance prints on the glass in Room No.408 of Hotel Leela, the mere fact that it matched the specimen prints of A-1, did not go to show that he was linked with the crime of the murders of the three deceased. All it showed was that he was in the room No.408. He does not explain the circumstances under which he was in that room.

79. Learned APP for the State pointed out that huge bills in the sum of Rs. 14,000 were run up by A-1 during his stay in Hotel Leela and he himself paid these bills using his credit card. In this regard, it seems that A-1 was Crl.A.247/2000 & Crl.A.81/2003 Page 48 of 55 arrested on 10th October 1996 itself. From the evidence of DWs 15 and 16, it is plain that he was taken to the police station there. When PW-141 and PW- 100 reached P.S. Sahar at 2:30 p.m., A-1 was already there. The payment of the bill is shown to be made at 5:37 p.m. in the evening which was much after A-1 was taken away by the police of PS Sahar. Any payment made during the time he was already in custody of the police cannot be said to be a voluntary payment made by A-1 of the bills of Leela Hotel. Merely because the bills were paid using his credit card would not mean that it was A-1

who booked the room at Leela Hotel. There is no proof that A-1 himself signed the register when the room was booked in the first instance.

80. PW-145 was a guard of Leela Hotel. He is supposed to have identified A-1, whereas another employee, PW-129 could not. Be that as it may, the mere fact that he was seen by one of them in the hotel room will again not satisfactorily explain the circumstances under which he was found in that room. This did not prove that A-1 somehow absconded after he was last seen at the MCD Office and emerged at Leela Hotel on his own by driving the BMW car himself from the MCD Office to Leela Hotel.

81. In this context, it must be noticed that in the charge sheet the prosecution states that it was A-2, Pinky and A-3, Chaudhary who in fact drove the BMW car having A-1, SS and DG from there to Meerut, in the first instance. It is not the case of the prosecution that A-1 somehow alone drove the BMW car from the MCD Office together with the dead bodies of SS and DG.

82. The further circumstance that is said to have been proved against A-1 is his making the call using the phone at the STD booth in front of Hotel Crl.A.247/2000 & Crl.A.81/2003 Page 49 of 55 Chetan. There has been a total misreading of the evidence by the trial Court in this regard. Nand Kishore (PW-75) was working at the said STD Booth outside Hotel Chetan in District Duliya in Maharashtra. On 8th June 1996 a call was made from there at 9.45 pm to phone number 6470435. The print outs of the calls made was exhibited as Ex. PW75/A. There was nothing to show that it was A-1 who made these calls.

83. PW-64 Vijay Singh of MTNL only proved that the said telephone number 6470435 was installed at Dish Restaurant in Greater Kailash-II whose proprietor was Subash Gupta. What was overlooked is the evidence of the IO, PW-141 and ASI Shiv Singh (PW-103) who stated that it was A-8, Ravi Prakash who led the police to the STD booth pursuant to his disclosure statement. Therefore, it was not the disclosure statement of A-1 that led the police to the STD booth as wrongly noticed by the trial Court. Therefore, this pointing out by A-8 could not be read as evidence against A-1 by any stretch of imagination. There was nothing in fact to show that it is A-1 who made the call from the STD booth.

84. Consequently, none of the circumstances which the trial Court has held as proved against A-1, in fact, stand proved against him. The Court is, therefore, unable to concur with the conclusion of the trial Court as regards the guilt of A-1 for the offence with which he was charged. He is entitled to the benefit of doubt.

85. As regards each of the other accused, there has been a very detailed discussion in the trial Court judgment of the circumstance qua each of them. Crl.A.247/2000 & Crl.A.81/2003 Page 50 of 55 The Court would only like to discuss the evidence as far as A-3 (Vibhore Singh), A-4 (Vijay Mohan) and A-5 (Hemant Kalra) are concerned. As far as A-3 is concerned, although he refused the TIP, all that was the only evidence against him is that six finger prints lifted from the Maruti 800 Car matched with the left thumb mark (S3) of A-3.

86. It is sought to be contended that the Maruti 800 car which was found outside IGI Airport contained digital diaries with the numbers of A-1 and A-5. The said digital diaries do not appear to have been proved in accordance with law and, therefore, has rightly not been relied upon by the trial Court. The mere fact that one Gold Bangle having daanedar design (Ex.P-27) was found in possession of A-3 is again insufficient to link him to the crime. Interestingly, there was no TIP for identifying the said bangle as belonging to either SS or DG. The mere fact that A-3 was arrested from Delhi Cantonment is again an insufficient circumstance. It has come in the evidence of ASI Saheb Singh (PW-21) that from noon on 22nd June 2006 to 23rd June 2006, Vibhore Singh, Hemant Kalra and Vijay Mohan were in the police lock up. Since they were already in the lock up, the question of A-3 being arrested on 22nd June 2006 from Gopinath Bazar at 5 pm was not proved.

87. As regards Hemant Kalra (A-5) his purchase of ampoules from the Super Bazar of LNJP, whose in-charge was Subash Oberoi (PW-16), was not proved. PW-16 could not recognize Hemant Kalra as the person who had purchased the ampoules. No name of the purchaser on the bill (Ex.PW-16/C) was mentioned. There was a name of Hemant Kalra on the other bill Crl.A.247/2000 & Crl.A.81/2003 Page 51 of 55 (Ex.PW-16/B). Apart from this, there was nothing to show the presence of Hemant Kalra at the MCD Office. The police also failed to collect any evidence from LNJP where A-5 is stated to have been working. The

non- deposit of the ampoules immediately at the malkhana also gave reasonable suspicion as regards the linking of the said ampoules with A-5. Even in the scaled site plan (Ex.PW-77/C) the location of the ampoules was not shown at the MCD Office. In the considered view of the Court, the trial Court was, therefore, justified in coming to the conclusion that there was insufficient evidence as far as A-5 was concerned.

88. As regards Vijay Mohan (A-4), he is shown to have been in custody at Meerut from 20th March 1996 to 11th June 1996. He is mistaken for A-6 (Vinay). There is a wrong mention of the name of Vijay Mohan instead of Vinay Kumar who is stated to have been arrested from Baroda on 19th June 1996. The evidence in regard to these two accused were, therefore, rightly disbelieved by the trial Court.

89. There is no sufficient evidence linking any of these accused to the crime and in particular even to the recovery of the stolen articles. None of the recoveries were in the presence of any independent witness and when viewed in the overall context, these recoveries cannot be believed. This Court has examined the evidence in respect of each of the other accused, that is, Deepak Das and Kamal @ Shailey and Vinay Kumar and concurs that the conclusion reached by the trial Court that the evidence against each of them is wholly insufficient to bring home their guilt. CrI.A.247/2000 & CrI.A.81/2003 Page 52 of 55 Failure of investigation

90. This was a case of circumstantial evidence with the police having to investigate the murder of three adults in peculiar circumstances. The police filed a charge sheet and then a supplementary one, setting out to prove that there was a conspiracy by ten persons to kill the three deceased. The trial Court found no evidence of conspiracy. Neither did it find any evidence to convict nine of the ten accused persons put on trial. Yet it held A-1 guilty of committing the three murders all by himself although this was never the case of the prosecution. As this Court has reasoned, the evidence placed on record does not even remotely substantiate such a conclusion.

91. The murder of three persons in the Personal Point case attracted considerable media attention when it happened in 1996. The details of the investigation, to which the media was privy, shaped public perception about the guilt of those put

on trial. Two decades later, when that perception is not borne out, it invites a reflection on the criminal justice process. Courts must test the evidence gathered during investigation in the calm interiors of court halls, uninfluenced by the discussions in the media. Objective criteria, evolved over the years and fine tuned by judicial precedents, are applied by the Court to evaluate the credibility of the prosecutions case and the defence of the accused. Not infrequently, the Court disagrees with the prosecution about the guilt of those put on trial. This is because, as the Supreme Court pointed out long ago in *Kashmira Singh v. State of Madhya Pradesh* AIR 1952 SC159 if a murder is a particularly cruel and revolting one, then for that reason it will be necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law.

92. Also, as cautioned in *Akhilesh Hajam v. State of Bihar* 1995 Supp (3) SCC357 though it appears to us that in all probability the appellant may be the culprit but probabilities and moral convictions have no place or any role to play to convict a person in the absence of legal evidence. There is a long distance to be travelled between the expression may be and must be. However strong emotional considerations may be, but the same cannot take the place of proof. 93. Unless the evidence presented before the Court passes legal muster, it will not be possible for the Court to agree with the conclusions reached in the charge sheets presented by the prosecution before it. The process of trial tests whether the distance from may have committed the crime to has beyond reasonable doubt committed the crime has been covered. In this case, the prosecution has failed to complete that journey. Suspicion, however strong, cannot and should not substitute proof. A dispassionate adjudication should be impervious to public perceptions of who might or might not be guilty. The present case points to a failure of investigation which has the inevitable result of acquittal of those put on trial. Conclusion 94. For all the aforementioned reasons, the Court sets aside the impugned judgment dated 28th March 2000 of the trial Court as far as it convicted A-1 for the offences with which he was charged and the impugned order on Crl.A.247/2000 & Crl.A.81/2003 Page 54 of 55 sentence dated 30th March 2000 by which A-1 was sentenced in the manner indicated.

95. The bail bonds and surety bonds of A-1 stand discharged. A-1 will fulfil the requirements of Section 437-A Cr PC to the satisfaction of the trial Court not later than two weeks from today.

96. As far as the States appeal is concerned, the Court finds no reason to disagree with the reasoning and conclusion of the trial Court holding that A- 3 to A-7 and A-9 were not guilty of the offences with which they were charged and, therefore, deserved to be acquitted. It also concurs with the impugned judgment of the trial Court acquitting all the accused of the offence of conspiracy under Section 120-B IPC and A-1 under Section 216 read with Section 34 IPC.

97. Crl. A. No.247/2000 of A-1 is allowed and Crl.A.No.81/2003 of the State is dismissed in the above terms. However, there will be no order as to costs.

98. The trial Court record be returned forthwith together with a certified copy of this judgment. JANUARY19 2018 dn/anb Crl.A.247/2000 & Crl.A.81/2003 S. MURALIDHAR, J.

I.S. MEHTA, J.

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